INTHE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

F.A.O. No. 38 of 1985
Date of decision November 28, 2007

1. **Meena daughter of Sh. Rangu Ram, aged about 7 years.**
2. **Yash Pal son of Sh.Rangu Ram aged about 4 years.**
3. **Kaka son of Sh.Rangu Ram aged about 6 months**
4. **Smt. Raj Kumari widow of Sh.Rangu Ram;**
   all residents of village Mohindinpur, Tehsil and Distt.Karnal (Minors through their mother and natural guardian Smt.Raj Kumari, widow of Rangu Ram).

..... Appellants-claimants

Versus

1. **Kanwarjit Singh s/o Sh.Labh Singh, r/o back side Subzi Mandi, Karnal (owner of the truck No.HYK-4557 as and on 2.3.1984)**
2. **Dhanpat alias Dhammi s/o Sh. Maya Ram, r/o New Char Chaman Colony, Karnal,**
3. **Oriental Fire & General Insurance Company, G.T. Road, Karnal.**

..... Respondents

CORAM: HON'BLE MR. JUSTICE SHAM SUNDER

Present: Mr. D.S. Bali, Senior Advocate with
Mr. Salil Bali, Advocate
for the appellants.

None for the respondents.

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Sham Sunder, J.

The instant appeal is directed against the judgment/award dated 12.10.1984 rendered by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal') vide which it granted compensation in the sum of Rs.51,500/- in favour of the appellants-claimants.

2. On 2.3.1984 at about 7.00 A.M. Rangu Ram, predecessor-in-interest of the appellants-claimants employed as Chowkidar/Peon in Haryana State Minor Irrigation Tubewell Corporation at

Karnal was coming on his cycle from Village Mohindinpur to Karnal and when reached just ahead of Village Nagla Farm towards Karnal, a truck bearing No. HYK 4557, being driven in a rash or negligent manner by Dhanpat alias Dhami came from backside and hit him. Panju Ram was going ahead of Rangu Ram on a separate cycle. The cycle which Rangu Ram was riding, was run over by the aforesaid truck, as a result whereof, he sustained multiple serious injuries, and died at the spot. Meena-appellant No.1 is the minor daughter of Rangu Ram, Yashpal and Kaka are the minor sons of Rangu Ram, whereas, Raj Kumari-appellant No.4, is the widow of said Rangu Ram. They all were dependent upon Rangu Ram, for their livelihood. Ultimately, a petition under Section 110-A of the Motor Vehicles Act, 1939, was filed by the appellants-claimants, claiming compensation in the sum of Rs.1 lac.

3. Kanwaljit Singh, owner of the truck and Dhanpat alias Dhammi,driver of the truck respondents Nos. 1 and 2 respectively, in their joint written statement, pleaded that the claimants had no locus standi to file and maintain the petition, as according to them, the same had not been filed by an authorized and proper person. It was further pleaded that the petition was bad for mis-joinder of parties and non-joinder of necessary parties. It was further pleaded that the petition had not been properly stamped. The accident was admitted. However, it was stated that the same took place, on account of the fault of Rangu Ram,deceased. The claimed amount was stated to be highly excessive. The remaining averments, were denied being wrong.

4. The insurance Company of the truck, in its written statement, almost took up similar objections, as were taken up by

respondents No.1 and 2. It was stated by it, in its written statement, that the accident took place on account of the rash or negligent act of Rangu Ram.

5. On the pleadings of the parties, the following issues were struck, by the Tribunal vide order dated 15.6.1983.

> *"1. Whether the accident of truck No.HYK-4557 took place because of rashness or negligence of respondent Dhanpat?OPP*
>
> *2. Whether the claimants are entitled to any compensation, if so, how much and from whom?OPP*
>
> *3. Whether the claimants have no locus standi to file the petition?OPR*
>
> *4. Whether the claim petition has not filed by a proper person?OPR*
>
> *5. Whether the petition is bad for misjoinder of parties?OPR*
>
> *6. Whether the petition is bad for non-joinder of necessary parties?*
>
> *7. Whether the petition is not properly stamped?OPR*
>
> *8. Whether Dhanpat respondent No.2 was holding a valid driving license on the date of the accident, if no, to what effect?OPR*
>
> *9. Relief."*

6. The parties led evidence. After hearing learned Counsel for the parties, and, on going through the evidence, on record, the Tribunal awarded compensation, in the sum of Rs.51,500/-, to the claimants, with interest at the rate of 6% per annum.

7. Dissatisfied, with the inadequacy of the compensation awarded, the instant appeal was filed by the the appellants-claimants.

8. Originally, Mr. P.S. Rana, Advocate appeared on behalf of the respondents but at the time of arguments none appeared on behalf of the respondents.

9. I have heard learned Counsel for the appellants-claimants, and have gone through the record of the case, carefully.

10. The learned Counsel for the claimants-appellants at the very outset, contended that the Tribunal was wrong, in awarding a meager compensation of Rs.51,500/-. He further contended that the age of the deceased at the time of the accident and his death was 45 years, and it was a fit case, in which multiplier of 24 instead of 16 should have been applied by the Tribunal. He further contended that even the future income of the deceased was not taken into consideration by the Tribunal. He, further contended that it was a fit case, in which there should be enhancement of compensation. The age of the deceased, at the time of accident, and his death, as is evident from Ex.P-1, copy of the Post Mortem Report, was 45 years. He was Chowkidar/Peon working on two month sanction basis, as is evident from Ex.A-2, a certificate issued by the Sub Divisional Officer, Store Sub Division, Meerut Road, Karnal. According to this certificate, the total monthly emoluments, being paid to him were Rs.483/-. Since, the deceased had a large family, to support, consisting of three minor children and his wife, he could not afford to spend more than Rs.83/- per month, for his personal maintenance. In this manner, he must be spending a sum of Rs.400/- per month for the maintenance of the appellants-claimants. Under these circumstances, the dependency of the appellants-claimants, comes to Rs.400/- per month. Since, the age of the deceased was 45 years, at the time of accident and death, in my considered opinion, the Tribunal was wrong, in applying the multiplier of 16, which was on the higher side. The multiplier of 12, in my considered opinion, could be said to be suitable. In this manner, the appellants-claimants were entitled to compensation in the sum

of Rs.59,600/- (Rs.400x12x12+2000 as funeral expenses). Since the deceased was merely a Class IV employee, the chances of his further advancement in life could be said to be almost nil. The contention of the learned Counsel for the appellants-claimants is, partially correct, and stands accepted. The findings of the Tribunal, on issue No.2 are modified to the extent indicated hereinbefore.

11. The Tribunal awarded interest at the rate of 6% per annum from the date of application until the realisation of the awarded amount. In my considered opinion, the Tribunal was wrong, in awarding interest at a lesser rate. The reasonable interest which should have been awarded by the Tribunal could be said to be 9% per annum. Accordingly, the appellants-claimants are held entitled to interest at the rate of 9% per annum from the date of filing the application, till the realisation of the amount.

12. The counsel for the appellants also contended that though the advalorem court fee was not required to be affixed, according to the provisions of Section 110-A of the Motor Vehicles Act, 1939, because it was only a petition filed under that provision claiming compensation on account of the death of Rangu Ram in a motor vehicle accident, and was not a suit, claiming damages, relating to the death of Rangu Ram, in a motor vehicle accident, yet the Tribunal got affixed the Court fee to the tune of Rs.2092.50 and, as such, the appellants are entitled to the refund of the same. The submission of the learned Counsel for the appellants, in this regard, appears to be correct. The appellants were not required to pay the advalorem Court fee, on the application under Section 110-A of the Motor Vehicles Act, 1939. In these circumstances, the appellants are entitled to

the refund of the advalorem court fee, if already paid, by them, on the claim petition. The contention of the learned Counsel for the appellants, being correct is accepted.

13. For the reasons recorded hereinbefore, the appeal is partly accepted with costs. Award dated 12.10.1984 of the Tribunal, is modified. The amount of compensation is enhanced to Rs.59,600/-from Rs.51,500/- awarded by the Tribunal. The shares of the minor appellants with interest in respect of the enhanced amount of compensation, are determined, in the same manner, as were calculated by the Claims Tribunal, in respect of the originally awarded amount. The direction of the Claims Tribunal regarding the deposit of the amount of the shares of the minor appellants-claimants and their entitlement on attaining majority shall remain intact. The appellants shall be entitled to interest at the rate of 9% per annum, on the entire amount, from the date of filing the claim petition, till its realization. Respondents No. 1 and 3 are held jointly and severally liable to pay the awarded amount, as respondent No.2 was given up by the appellants, vide order dated 28.7.1996.

(SHAM SUNDER)
JUDGE

November 28, 2007
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